



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 9/3/2015
C O R A M

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

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C.R.P.PD (MD) Nos.68 and 111 of 2015
and
MP(MD).1 & 2 in CRP(MD) 68/2015
and
MP(MD)1/2015 in CRP(MD)111/2015

N. Kasi Perumal ... Petitioner in both the petitions/
3rd Party.

Vs

1. P. Sankaran ... Respondent/Plaintiff
2. K. Ramalakshmi
3. A. Vedha Nayagam ... Respondents in both the petitions/
Defendant

Prayer in C.R.P.PD (MD) No.68 of 2015: Petition is filed under Article 227 of the Constitution of India to call for the records and struck-off the plaint in O.S.No.173 of 2014 on the file of the learned District Munsif Court, Srivaikundam.

Prayer in C.R.P.PD (MD) No.111 of 2015: Petition is filed under Article 227 of the Constitution of India to call for the records and to set aside the order passed in I.A.No.1619 of 2014 in O.S.No.173 of 2014 dated 6/11/2014 on the file of the District Munsif, Srivaikundam.

For petitioner ... Mr.D.Srinivasa Raghavan

For respondents ... Mr.G.Thalaimutharasu for R.1.

Mr.A.George Stephen for R.2.

Mr.T.Selvam for R.3.

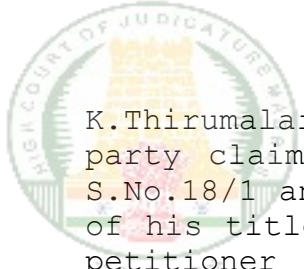
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C O M M O N O R D E R

The third party in O.S.No.173 of 2014 is the revision petitioner herein seeking to strike off the suit in C.R.P.PD(MD) No.68 of 2015 and also challenging the appointment of a Commissioner in the suit in C.R.P.PD (MD) No.111 of 2015.

2. The suit is for a declaration of title and injunction filed by the plaintiff. At the instance of the plaintiff, I.A.No.1619 of 2014 was filed for appointing a Commissioner which was allowed ex parte.

3. The learned counsel for the petitioner contended that the suit property is a total extent of 19 acres and 30 cents in S.Nos.8/1A and C. The suit property was purchased by the plaintiff on 25/11/2008 from one



K.Thirumalaiappa Mudaliyar. The revision petitioner, who is the third party claims that his father originally owned 2 acres and 30 cents in S.No.18/1 and he has also produced a sale deed dated 8/10/1973 in support of his title. Kist receipts from 1992 to 2002 were also produced by the petitioner in the name of his father. The defendants 1 and 2 are also said to have executed a consent deed in favour of the plaintiff on 3/5/2014 and 4/8/2014 respectively. The second defendant also owns one acre in the said survey number.

4. The learned counsel for the petitioner had filed C.R.P.PD (MD) No.68 of 2015 to strike off the plaint as the suit itself does not contain any triable issue and does not disclose any cause of action. It is the contention of the learned counsel for the petitioner that the suit ought not to have been entertained as there are no documents to show the possession of the plaintiff pursuant to the sale and there is no evidence or cause of action that the first and second defendants disturbed the plaintiff's possession. The plaint cannot be sustained on a mere statement in the absence of any contentious issue.

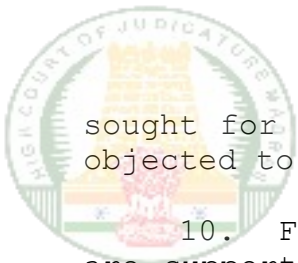
5. According to the learned counsel for the petitioner, the Court below without verifying the documents in its proper prospective had entertained the suit in a routine manner and issued notice to the first and second defendants, who are the second and third respondents herein. The plaintiff had not produced any of the documents along with the plaint as required by the Code of Civil Procedure and he has also not established by any documentary evidence that his possession was disturbed by the second and third respondents for entertaining the suit. Therefore, the suit which lacks any cause of action amounts to an abuse of process of law and hence the same has to be struck off.

6. It was further contended by the learned counsel for the petitioner that the plaintiff had colluded with the first and second defendants in active connivance which can be seen from the subsequent conduct of the parties. According to the third party/petitioner, the suit is laid by the plaintiff on the allegation that the first and second defendants had disturbed his peaceful possession.

7. The application for appointment of a Commissioner was taken out by the plaintiff which was allowed. The Commissioner filed a memo seeking Police protection alleging that the defendants and his men were obstructing his peaceful execution of the warrant of commission. Therefore, sought for Police protection.

8. Accordingly, the plaintiff also had filed an application in I.A.No.1781 of 2014 seeking Police protection for the Commissioner to execute the warrant. Surprisingly, the defendants 1 and 2 endorsed as no counter and the petition for Police protection was allowed. Therefore, the third party/petitioner contended that the suit itself is a collusive one as earlier, the defendants themselves had executed a consent deed in favour of the plaintiff. While so, the allegation by the plaintiff that the defendants had disturbed her peaceful possession itself is unbelievable.

9. Further, the Commissioner had filed a memo stating that the defendants had disturbed the peaceful execution of the warrant and hence



sought for Police protection. However, the defendants themselves have not objected to the same and endorsed as no counter.

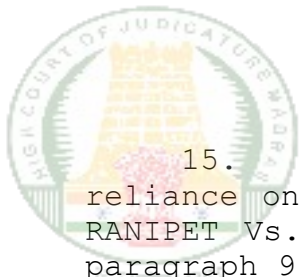
10. From the above conduct of the defendants, it is clear that they are supporting the case of the plaintiff. Therefore, it is contended by the third party/petitioner that it is a collusive suit which is an abuse of process of law. Moreover, it is contended that the plaintiff had not produced any documents prior to 2008 before the year of his purchase. According to the petitioner, the Court not only committed a manifest error in entertaining the suit but also appointed a Commissioner ex parte.

11. He had contended further that the plaintiff is trying to take a legal sanction for his illegal activities by filing the above suit. The plaintiff also had not described the four boundaries in the suit property when he had specifically contended that the defendants are disturbing with his boundaries. When the four boundaries of property purchased by him in the year 2008 is not described in the suit schedule, it is not possible for the Court to give a finding on the same. Therefore, to get over the difficulty, the plaintiff has come up with an application to appoint the Commissioner in order to gather evidence. In such circumstances, the learned counsel prayed that the suit should not have been entertained and the same should have been struck off.

12. Per contra, the learned counsel for the respondents contended that the petitioner does not have any right to challenge the maintainability of the suit as he is only a third party. According to the plaintiff/respondent, he has got right over the property situate in S.Nos.18/A1 and 18/1C having purchased the same from the predecessor viz., Hugdar of Seevalaperi Chathiram. As the first and second defendants obstructed his peaceful possession, the suit itself was filed for declaration of title. According to the plaintiff, the revision petitioner does not have any right over the suit property. Even if the revision petitioner has got any right over the suit property, it is open to him to get himself impleaded in the suit and contest the same but cannot ask for striking off the suit itself. Even the document title produced by the third party/petitioner only shows that survey number is 18 without a sub-division. When the plaintiff claims a larger extent of 19.30 acres, the third party/petitioner claims to have title only for 2.2 acres. Such dispute can only be resolved after the full fledged trial in the suit and therefore, the suit cannot be dismissed at the threshold itself. If the revision petitioner is so aggrieved, instead of seeking to strike off the suit, he can either file a separate suit or implead himself in the present suit.

13. Now the question that has to be decided is whether the suit has to be struck off and the order appointing a Commissioner has to be set aside.

14. From the records, as submitted by the respective parties, each one of them claim title to the property situate in the same survey number. The plaintiff having filed the suit for declaration, the burden is on him to establish that he is the owner of the property. If the plaintiff is unable to establish the right and title of his predecessors, he may be non-suited.



15. But the learned counsel for the revision petitioner places reliance on RANIPET MUNICIPALITY, rep. BY ITS COMER AND SPECIAL OFFICER, RANIPET Vs. M.SHAMSHEERKHAN reported in {1998 (1) CTC - 66}, wherein in paragraph 9, it has been held as follows:-

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"It is this conduct of the respondent that is attacked by the petitioner as abuse of process of Court. What is 'abuse of the process of the Court'? Of course, for the term 'abuse of the process of the Court', the Code of Civil Procedure has not given any definition. A party to a litigation is said to be guilty of abuse of process of the Court, in any of the following cases:-

(1) Gaining an unfair advantage by the use of a rule of procedure.

(2). Contempt of the authority of the Court by a party or stranger.

(3). Fraud or collusion in Court proceedings as between parties.

(4). Retention of a benefit wrongly received.

(5). Resorting to and encouraging multiplicity of proceedings.

(6). Circumventing of the law by indirect means.

(7). Presence of witness during examination of previous witness.

(8). Institution vexatious, obstructive or dilatory actions.

(9). Introduction of scandalous or objectionable matter in proceedings.

(10). Executing a decree manifestly at variance with its purpose and intent.

(11). Institution of a suit by a puppet plaintiff.

(12). Institution of a suit in the name of the firm by one partner against the majority opinion of other partners etc."

16. Following by the above decision, the learned counsel for the petitioner contended that the plaintiff is using the defendants as puppet in his hands and trying to defraud the Court and obtain a collusive decree which amounts to circumventing of the land by indirect means. Hence prayed for striking off the suit.

17. The learned counsel also placed reliance on K.K.SWAMINATHAN Vs. SRINIVASAGAM reported in {2003 (4) CTC - 347}, wherein in paragraph No.33, it has been held as follows:-

<https://hcservices.ecourts.gov.in/hcservices/> *"Be it under Article 227 of the Constitution of India or under Section 115 CPC, the High Court has general supervisory jurisdiction. That supervisory*



revisional jurisdiction of the High Court is the residuary jurisdiction conferred on the High Court. Thus, exercising the supervisory jurisdiction conferred on the High Court under Section 115 CPC, it is just and necessary that the plaint in O.S.No.2473/1996 to be ordered to be struck off. In the circumstances of the case, it is also necessary to direct the revision petitioner to pay the costs of the suit to the respondent."

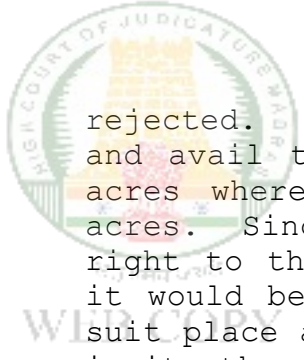
18. Per contra, the learned counsel for the plaintiff relied on GANAPATHY SUBRAMANIAN Vs. S.RAMALINGAM reported in {2007 (3) Law Weekly - 515}, wherein in paragraph Nos.15 and 16, it has been held as follows:-

"15. ... If the petitioner is of the view that he is having a good case to have the plaint rejected, he would very well place the materials before the trial Court itself and seek for the required relief in his favour by placing the materials on which reliance has been placed before this Court. Above all, the trial Court has not committed any manifest error except ordering issuance of summons to defendants in the suit filed by the respondents herein.

16. There is no impediment or embargo for the petitioner to put forth his contentions before the trial Court to strike off the plaint at the threshold. As this Court is relegating the petitioner to go before the trial Court for the relief, the Court has restrained itself from going into the facts of the case, as any observation made by this Court would have a bearing on the suit, which is pending before the trial Court. Of course, the petitioner is also having an effective remedy in the Code of Civil Procedure itself to have the suit struck off and he could very well avail that remedy. On the above said reasoning, I am not inclined to grant the relief as prayed for in the revision."

19. Though the revision petitioner contended that the plaint has been filed which is an abuse of process, as the same is filed collusively with the defendants, he has to make out a case for striking off the plaint. The revision petitioner also has a right in the suit property which he has been proved by producing his sale deed. If the right and title of the third party is put to jeopardy by the suit it is open to him to implead himself in the suit and contest the same and thrash out the issue.

20. The learned counsel for the first respondent/plaintiff also has got no serious objection for impleading the revision petitioner in the suit. Besides, the revision petitioner also has an effective remedy of Order 7 Rule 11 of the Code of Civil Procedure itself to get the plaint



rejected. It is open to the petitioner to implead himself in the suit and avail the remedy under the Code. The plaintiff has purchased 19.3 acres whereas admittedly, the third party/petitioner has got only 2.2 acres. Since both the plaintiff as well as the revision petitioner claim right to the right and title of the property though in a varied extent, it would be better if the petitioner also gets himself impleaded in the suit place all the relevant materials on which he is placing reliance and invite the decree on the same.

21. So far as the appointment of Commissioner is concerned, since the same has been issued ex parte and the defendants also have got no objection, it would be difficult for the third party/petitioner to establish his right. Therefore, the order of the ex parte Commissioner appointed by the trial Court is set aside and it is open to the plaintiff to appoint a fresh Commissioner, after giving notice to all the parties.

22. In fine,

(I). C.R.P.PD (MD) No.68 of 2015 is dismissed, confirming the order passed in O.S.No.173 of 2014 on the file of the District Munsif, Srivaikundam. No costs. Consequently, the connected Miscellaneous Petitions are also dismissed.

(ii). C.R.P.PD (MD) No.111 of 2015 is allowed and the order passed by the District Munsif, Srivaikundam in I.A.No.1619 of 2014 in O.S.No.173 of 2014 is set aside. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

\\True copy\\

Sub Assistant Registrar

To

The District Munsif, Srivaikundam.

+2 CC TO M/S.D.SRINIVASRAGAVAN, ADVOCATE SR.NO.11109

+2 CC TO M/S.G.THALAIMUTHARASU, ADVOCATE S.NO.11258 & 11259

C.R.P.PD (MD) Nos.68 and 111 of 2015
9/3/2015

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